IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Crl.Rev.Pet.No. 796 of 2000(B)

C.C.NO.30/1992 OF THE CHIEF JUDICIAL MAGISTRATE, MANJERI
CRL.A.NO.224/1994 OF THE SESSIONS COURT, MANJERI

REVN. PETITIONER:

NECHIYODAN ASSAINAR,
S/O.ABDURAHIMAN,
KALIKAVU AMSOM
AND DESOM,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.A.JALEEL
SRI C.ANILKUMAR

RESPONDENTS:

THE STATE OF KERALA, (REPRESENTED BY CIRCLE INSPECTOR OF POLICE, MANJERI, IN CRIM NO.380/1991 OF MANJERI POLICE STATION), REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.4237/2000 IN CRL.R.P.NO.796/2000

DISMISSED

SD/-K.R.UDAYABHANU, JUDGE

10/09/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No.796 of 2000

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Dated this the 10th day of September, 2007

O R D E R

The revision petitioner is the accused, who stands convicted for the offences under Sections 279, 337, 338 and 304A I.P.C and sentenced to undergo rigorous imprisonment for three months for the offence under Section 279 I.P.C, to undergo rigorous imprisonment for three months for the offence under Section 337 I.P.C., to undergo rigorous imprisonment for six months for the offence under Section 338 I.P.C and to undergo rigorous imprisonment for one year for the offence under Section 304A I.P.C., with a direction that the sentences shall run concurrently.

2. The prosecution case is that on 06/09/1991, at about 2.15 p.m., the accused drove stage carriage bus bearing registration No.KRZ.5643 on Kozhikode-Manjeri public road from west to east in a rash and negligent manner so as to endanger human life and hit a motor-car bearing registration No.KL-10/438 coming from the opposite direction at a spot called Schoolpadi. The driver of the

motor car sustained grievous injuries and died. PWs.3, 4, 6 and 7 sustained hurt, and PW.5 sustained grievous hurt.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 16, Exts.P1 to P16(a) and MOs.I and II series. The defence examined DWs.1 to 3. When questioned under Section 313 Cr.P.C, the accused had stated that the incident took place due to the fault of the car driver.

4. PWs.3 to 7, the injured have testified as to the incident. PWs.1 and 2 are the passengers in the bus. PW.10 is the doctor of District Hospital, Manjeri, who issued Exts.P3 to P8 wound certificates. The deceased was referred to the Medical College Hospital, Kozhikode. PW.11 is the E.N.T Surgeon, who issued Ext.P9 certificate with respect to the injuries sustained by PW.5. PW.11 stated that there was fracture of the nasal bone of PW.5. PW.12 is the doctor who conducted the autopsy. Ext.P10 is the post-mortem certificate issued by him. The doctors have testified that the injuries and death can be caused due to the injuries sustained in the accident. There was no mechanical defect to both the vehicles, which was proved through the testimony of PW.13, who issued the M.V.I certificates of both the

vehicles, i.e., Exts.P11 and P12. PW.7 is the Manager of the South Indian Bank, Manjeri and PW.5 is the Peon of that bank. They were passengers in the car and were on their way with cash taken from Kozhikode branch of the bank. Ext.P15 is the scene mahazar, which would show that the incident took place totally on the wrong side of the bus driven by the accused. It was contended that the incident had taken place at a curve but I find that the same is not a justification for taking the vehicle through the wrong side. PW.8 has specifically identified the accused as the driver who drove the vehicle. There was no dispute as to the identity in the cross-examination by any of the witnesses. The contention raised herein that PW.16, the investigating officer has taken only the notes of the witnesses and not recorded the statement is not seen raised in both the courts below nor while cross-examining any of the witnesses including PW.16. In the circumstances, it can only be presumed that PW.16 deposed that he took notes meaning that he recorded the statement. In the circumstances, I find no reasons to deviate from the findings of the courts below. The conviction is confirmed.

5. The counsel for the revision petitioner has sought for leniency pointing out that since the date of the incident, about 16 years have

elapsed and that so far the accused was facing the ordeal of the criminal proceedings and that his entire family is depending on his income.

In the circumstances, the sentence imposed for the offence under Section 304A I.P.C is modified to imprisonment till the rising of the court and to pay compensation of rupees twenty-five thousand to the legal heirs of the deceased. No separate sentence is awarded for the rest of the offences. The revision petitioner is granted three months time to remit the amount of compensation. He shall appear before the Chief Judicial Magistrate, Manjeri, on 10/12/2007 to receive the sentence.

The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.796 of 2000

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O R D E R

10th September, 2007